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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**999 18<sup>th</sup> STREET, SUITE 300**

**DENVER, CO 80202-2466**

**EXPEDITED STORM WATER SETTLEMENT AGREEMENT**

Docket Number: CWA-08-2006-0010, NPDES No. COR-10BD2F 33

Sundt Construction, Inc. ("Respondent") is a "person," within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is a "Findings and Alleged Violations Form" ("Form"), which is hereby incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent has committed the violations set forth in the Form.

Respondent had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act ("the Act" or "CWA"), 33 U.S.C. § 1311, and/or failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit authorized under Section 402 of the Act, 33 U.S.C. § 1342, as noted on the attached Form.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over the allegations and any "person" who "discharges pollutants" from a "point source" to "waters of the United States" Respondent neither admits nor denies the allegations specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("CAFO") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this CAFO in order to settle the civil violations specified in the Form for a penalty of \$9,100. Respondent consents to the assessment of this penalty, and waives the right to contest the allegations specified in the Form, and waives the right to appeal.

Additionally, Respondent certifies, subject to civil and criminal penalties, for making a false statement to the United States Government, that it has corrected any deficiencies identified in the Form, and to the best of its knowledge, is in compliance with the NPDES permitting program. Within ten (10) days of the effective date of this CAFO Respondent shall submit a bank, cashiers or certified check for the amount specified above payable to the "Treasurer, United States of America" to:

**U.S. EPA, Region 8**

**In the Matter of: Sundt Construction, Inc.**

**Docket No.:**

**PO Box 360859M**

**Pittsburgh, PA 15251**

Respondent shall write the docket number of this case on the penalty payment check. This CAFO, along with a photocopy of your check, is to be returned to Darcy O'Connor, mail code 8ENF-W-NP at the address listed at the top of this document.

This CAFO settles EPA's civil penalty claims against Respondent for the CWA violations described in the Form. However, EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation, and does not waive its right to issue a compliance order for the violations

described in the Form. EPA has determined this CAFO to be in the public interest, and Respondent agrees.

This CAFO is binding on the parties signing below and effective thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the Order is filed by a commenter pursuant to § 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C) and Part 22. If Respondent does not sign and return this CAFO as presented within 30 days of the date of its receipt, the proposed CAFO is withdrawn without prejudice to EPA's ability to issue any order or file any enforcement action for the violations identified in the Form.

**APPROVED BY EPA:**

Melanie Pallman Date: 12/23/05  
Melanie Pallman

Unit Chief

NPDES Enforcement Unit

Technical Enforcement Program

Office of Enforcement, Compliance

and Environmental Justice

David Janik for Date: 12/23/05  
David Janik

Supervisory Attorney

Legal Enforcement Program

Office of Enforcement, Compliance

and Environmental Justice

**APPROVED BY RESPONDENT in accordance with 40 C.F.R. § 122.22:**

Name (print): SCOTT SMITH

Title (print): PROJECT MANAGER

Signature: Scott Smith

Having determined that this CAFO is authorized by law and is in the public interest,

**IT IS SO ORDERED:**

Carol A. LeBoo Date: March 8, 2006  
Alfred C. Smith Carol A. LeBoo, Acting  
Regional Judicial Officer

RECEIVED TIME DEC. 20. 11:06AM

Findings and Alleged Violations Form				
1 Legal Name and Mailing Address of Operator		Telephone Number	NPDES Permit Number	
Mike Savage Sundt Construction Inc. PO Box 40 US AFA, CO 80840		719-632-5355	COR10BI5F	
2 Location and Address of Site				
Multi-Family Housing East Douglas Drive US AFA, CO 80840				
Name of Site Contact:		Mike Savage		
Name of Authorized Official (40 CFR 122.22):		Mike Savage		
Inspection Date:		9/16/2004		
Start Construction Date:		Not Recorded		
Estimated Completion Construction Date:		2/27/2005		
If Unpermitted, Number of Months Unpermitted:		0		
Name of Receiving Water Body (Indicate whether 303(d) listed):		Monument Creek		
Acres Disturbed (whole common plan):		32 acres		
Is Site Eligible for Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?		No		
			No. of	
	Citation		Violations	Settlement
	Reference		Amount	Offer
3 Operator(s) in control of site specifications unpermitted for _____ months (# of months = # of violations)	CWA 301	0	\$500.00	\$0.00
4 Operator(s) in control of day-to-day activities unpermitted for _____ months (# of months = # of violations)	CWA 301	0	\$500.00	\$0.00
5 SWPPP not prepared (If no SWPPP, leave elements 6 - 31 blank)	CGP 3.1.A	0	\$4,000.00	\$0.00
6 SWPPP prepared but prepared after construction start (# of months = # of violations)	CGP 3.1.A	0	\$75.00	\$0.00
7 SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents, etc...	CGP 3.1.B	0	\$250.00	\$0.00
8 SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control	CGP 3.3.A	0	\$500.00	\$0.00
9 SWPPP does not have site description, as follows:				
A Nature of activity in description	CGP 3.3.B.1	0	\$100.00	\$0.00
B Intended sequence of major activities	CGP 3.3.B.2	0	\$100.00	\$0.00
C Total disturbed acreage	CGP 3.3.B.3	1	\$100.00	\$100.00
D General location map	CGP 3.3.B.4	0	\$100.00	\$0.00
E Site map	CGP 3.3.C	0	\$500.00	\$0.00
F Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, offsite materials, waste, borrow or equipment storage areas, surface waters, discharge points, areas of final stabilization (count each omission under 9F as 1 violation)	CGP 3.3.C 1 - 8	1	\$50.00	\$50.00
G. Location/description industrial activities, like concrete or asphalt batch plants	CGP 3.3.D	0	\$500.00	\$0.00
10 SWPPP does not:				
A Describe all pollution control measures (e.g. BMPs)	CGP 3.4.A	1	\$750.00	\$750.00
B Describe sequence for implementation	CGP 3.4.A	0	\$250.00	\$0.00
C Detail operator(s) responsible for implementation	CGP 3.4.A	0	\$250.00	\$0.00

11	SWPPP does not describe interim stabilization practices	CGP 3.4.B	0	\$250.00	\$0.00
12	SWPPP does not describe permanent stabilization practices	CGP 3.4.B	0	\$250.00	\$0.00
13	SWPPP does not describe a schedule to implement stabilization practices	CGP 3.4.B	0	\$250.00	\$0.00
14	Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 14 as 1 violation)	CGP 3.4.C.1-3	3	\$250.00	\$750.00
15	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas	CGP 3.4.D	0	\$500.00	\$0.00
16	SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed	CGP 3.4.E	0	\$500.00	\$0.00
17	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit	CGP 3.4.F	0	\$500.00	\$0.00
18	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust	CGP 3.4.G	0	\$500.00	\$0.00
19	SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials	CGP 3.4.H	0	\$250.00	\$0.00
20	SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials	CGP 3.4.I	0	\$500.00	\$0.00
21	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP	CGP 3.5	0	\$500.00	\$0.00
22	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges	CGP 3.5	0	\$500.00	\$0.00
23	Endangered Species Act documentation is not in SWPPP	CGP 3.7	0	\$500.00	\$0.00
24	Historic Properties (Reserved)	CGP 1.3.C.7			
25	Copy of permit and/or NOI not in SWPPP (count each omission under 25 as 1 violation)	CGP 3.8	0	\$250.00	\$0.00
26	SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)	CGP 3.9	0	\$750.00	\$0.00
27	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans	CGP 3.9	0	\$250.00	\$0.00
28	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates	CGP 3.10.G	0	\$500.00	\$0.00
29	SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under 29 as 1 violation)	CGP 3.11.C	0	\$50.00	\$0.00
30	Copy of SWPPP not retained on site	CGP 3.12.A	0	\$500.00	\$0.00
	A SWPPP not made available upon request	CGP 3.12.C	0	\$500.00	\$0.00
31	SWPPP not signed/certified	CGP 3.12.D	1	\$500.00	\$500.00
32	Inspections not performed either once every 7 days, or once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas)	CGP 3.10.A, 3.10.B	0	\$75.00	\$0.00
33	Inspections not conducted by qualified personnel	CGP 3.10.D	0	\$500.00	\$0.00
34	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected	CGP 3.10.E.	0	\$50.00	\$0.00
35	All pollution control measures not inspected to ensure proper operation	CGP 3.10.E.	0	\$500.00	\$0.00
36	Discharge locations are not observed and inspected	CGP 3.10.E.	0	\$50.00	\$0.00
37	For discharge locations that are not accessible, nearby locations are not inspected	CGP 3.10.E.	0	\$50.00	\$0.00
38	Entrance/exit not inspected for off-site tracking	CGP 3.10.E.	0	\$500.00	\$0.00
39	Site inspection report does not include: date, name and qualification of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have	CGP 3.10.G	1	\$50.00	\$50.00

	failed, BMP(s) that are needed, corrective action required				
	including changes/updates to SWPPP and schedule/dates				
	(count each omission under 39 as 1 violation)				
40	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)	CGP 3.10.G	38	\$50.00	\$1,900.00
41	Sign/notice not posted	CGP 3.12.B	0	\$250.00	\$0.00
	A Does not contain copy of complete NOI	CGP 3.12.B	0	\$50.00	\$0.00
	B Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign	CGP 3.12.B	0	\$50.00	\$0.00
42	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water	CGP 3.13.F	0	\$500.00	\$0.00
43	Control measures are not properly:				
	A Selected	CGP 3.13.A	0	\$500.00	\$0.00
	B Installed	CGP 3.13.A	1	\$500.00	\$500.00
	C Maintained	CGP 3.13.A	8	\$500.00	\$4,000.00
	1. Maintenance not performed prior to next anticipated storm event (count each failure of operator to properly select, install, or maintain each BMP as 1 violation)	CGP 3.6.B	0	\$250.00	\$0.00
44	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	CGP 3.13.B	1	\$500.00	\$500.00
45	Litter, construction debris, and construction chemicals exposed to storm water are not prevented from becoming a pollutant source (e.g. screening outfalls, pickup daily, etc.)	CGP 3.13.C	0	\$500.00	\$0.00
46	Stabilization measures are not initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation	CGP 3.13.D	0	\$500.00	\$0.00
	*Exceptions:				
	(a) Snow or frozen ground conditions	CGP 3.13.D.1			
	(b) Activities will be resumed within 14 days	CGP 3.13.D.2			
	(c) Arid or Semi-arid areas (<20 inches per year)	CGP 3.13.D.3			
47	Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained	CGP 3.13.E.1	0	\$1,000.00	\$0.00
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries	CGP 3.13.E.2	0	\$1,000.00	\$0.00
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more	CGP 3.6.C	0	\$500.00	\$0.00
48	Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 47 above)	CGP 3.13.E.3	0	\$500.00	\$0.00
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more	CGP 3.6.C	0	\$500.00	\$0.00
Total Expedited Settlement:					\$9,100.00


## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED STORM WATER SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **SUNDT CONSTRUCTION, INC., DOCKET NO.: CWA-08-2006-0010** was filed with the Regional Hearing Clerk on March 8, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Michael Risner, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on March 8, 2006, to:

Michael Natale  
Sundt Construction, Inc.  
P.O. Box 26685 (85726)  
Tucson, AZ 85714

March 8, 2006

  
Tina Artemis  
Regional Hearing Clerk



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